

HOUSE BILL 521

Unofficial Copy  
E1  
SB 544/03 - JPR

2004 Regular Session  
4lr1415  
CF 4lr2434

---

By: **Delegates Marriott, Anderson, Benson, Bobo, Burns, Cane, Carter, Dumais, Gaines, Goldwater, Gordon, Gutierrez, Harrison, Heller, Hixson, Holmes, Howard, Hubbard, Hurson, Jones, Kaiser, Kelley, Kirk, Lee, Madaleno, Mandel, McIntosh, Menes, Montgomery, Nathan-Pulliam, Niemann, Oaks, Paige, Parker, Patterson, Proctor, Rosenberg, Stern, Taylor, V. Turner, and Vaughn**

Introduced and read first time: February 2, 2004

Assigned to: Judiciary

---

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Death Penalty - Repeal**

3 FOR the purpose of repealing the death penalty; repealing procedures and  
4 requirements related to the death penalty; providing that certain inmates who  
5 have been sentenced to death may not be executed and shall be considered as  
6 having received a sentence of life imprisonment without the possibility of parole  
7 under certain circumstances; providing that in certain cases in which the State  
8 has filed a notice to seek a sentence of death the notice shall be considered  
9 withdrawn and it shall be considered a notice to seek a sentence of life  
10 imprisonment without the possibility of parole under certain circumstances;  
11 providing that certain persons serving life sentences are not eligible persons for  
12 Patuxent Institution under certain circumstances; altering the circumstance  
13 concerning parole for persons serving life sentences when the State sought a  
14 certain penalty; making conforming and clarifying changes; and generally  
15 relating to the repeal of the death penalty.

16 BY repealing

17 Article - Correctional Services  
18 Section 3-901 through 3-909 and the subtitle "Subtitle 9. Death Penalty  
19 Procedures"  
20 Annotated Code of Maryland  
21 (1999 Volume and 2003 Supplement)

22 BY repealing

23 Article - Criminal Procedure  
24 Section 7-201 through 7-204 and the subtitle "Subtitle 2. Proceedings After  
25 Death Sentences"; 8-108, and 11-404  
26 Annotated Code of Maryland  
27 (2001 Volume and 2003 Supplement)

- 1 BY repealing and reenacting, with amendments,  
2 Article - Correctional Services  
3 Section 4-101(e)(2), 4-305(b)(2), 6-112(c), 7-301(d)(2), and 7-601(a)  
4 Annotated Code of Maryland  
5 (1999 Volume and 2003 Supplement)
- 6 BY repealing and reenacting, with amendments,  
7 Article - Courts and Judicial Proceedings  
8 Section 8-210, 8-301, 9-204, and 12-307  
9 Annotated Code of Maryland  
10 (2002 Replacement Volume and 2003 Supplement)
- 11 BY repealing and reenacting, with amendments,  
12 Article - Criminal Procedure  
13 Section 7-101, 7-103(b), and 7-107(b)  
14 Annotated Code of Maryland  
15 (2001 Volume and 2003 Supplement)
- 16 BY repealing and reenacting, with amendments,  
17 Article - Criminal Law  
18 Section 2-201(b), 2-304(a), 2-305, and 14-101  
19 Annotated Code of Maryland  
20 (2002 Volume and 2003 Supplement)
- 21 BY repealing  
22 Article - Criminal Law  
23 Section 2-202, 2-301, 2-303, and 2-401  
24 Annotated Code of Maryland  
25 (2002 Volume and 2003 Supplement)
- 26 BY repealing and reenacting, with amendments,  
27 Article - Health - General  
28 Section 8-505(b)  
29 Annotated Code of Maryland  
30 (2000 Replacement Volume and 2003 Supplement)
- 31 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
32 MARYLAND, That Section(s) 3-901 through 3-909 and the subtitle "Subtitle 9.  
33 Death Penalty Procedures" of Article - Correctional Services of the Annotated Code of  
34 Maryland be repealed.
- 35 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 7-201 through  
36 7-204 and the subtitle "Subtitle 2. Proceedings After Death Sentences"; 8-108, and

1 11-404 of Article - Criminal Procedure of the Annotated Code of Maryland be  
2 repealed.

3 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
4 read as follows:

5 **Article - Correctional Services**

6 4-101.

7 (e) (2) "Eligible person" does not include an individual who:

8 (i) is serving two or more sentences of imprisonment for life under  
9 § 2-201, FORMER § 2-303, or § 2-304 of the Criminal Law Article;

10 (ii) is serving one or more sentences of imprisonment for life when a  
11 court or jury has found under FORMER § 2-303 of the Criminal Law Article, beyond a  
12 reasonable doubt, that one or more aggravating circumstances existed; or

13 (iii) has been convicted of murder in the first degree, rape in the  
14 first degree, or a sexual offense in the first degree, unless the sentencing judge, at the  
15 time of sentencing or in the exercise of the judge's revisory power under the Maryland  
16 Rules, recommends that the individual be referred to the Institution for evaluation.

17 4-305.

18 (b) (2) An inmate sentenced to life imprisonment as a result of a proceeding  
19 under FORMER § 2-303 or § 2-304 of the Criminal Law Article is not eligible for  
20 parole consideration until the inmate has served 25 years or the equivalent of 25  
21 years when considering allowances for diminution of the inmate's period of  
22 confinement as provided under Title 3, Subtitle 7 of this article and § 6-218 of the  
23 Criminal Procedure Article.

24 6-112.

25 (c) (1) The Division shall complete a presentence investigation report in  
26 each case in which [the death penalty or] imprisonment for life without the  
27 possibility of parole is requested under [§ 2-202 or] § 2-203 of the Criminal Law  
28 Article.

29 (2) The report shall include a victim impact statement as provided under  
30 § 11-402 of the Criminal Procedure Article.

31 (3) The court or jury before which the separate sentencing proceeding is  
32 conducted under [§ 2-303 or] § 2-304 of the Criminal Law Article shall consider the  
33 report.

1 7-301.

2 (d) (2) An inmate who has been sentenced to life imprisonment as a result of  
3 a proceeding under FORMER § 2-303 or § 2-304 of the Criminal Law Article is not  
4 eligible for parole consideration until the inmate has served 25 years or the  
5 equivalent of 25 years considering the allowances for diminution of the inmate's term  
6 of confinement under § 6-218 of the Criminal Procedure Article and Title 3, Subtitle  
7 of this article.

8 7-601.

9 (a) On giving the notice required by the Constitution, the Governor may:

10 (1) [commute or change a sentence of death into a period of confinement  
11 that the Governor considers expedient;

12 (2)] pardon an individual convicted of a crime subject to any conditions  
13 the Governor requires; or

14 [(3)] (2) remit any part of a sentence of imprisonment subject to any  
15 conditions the Governor requires, without the remission operating as a full pardon.

16 **Article - Courts and Judicial Proceedings**

17 8-210.

18 (a) Any person summoned for jury service may be excused by the jury judge if  
19 the person shows that undue hardship, extreme inconvenience, or public necessity  
20 require his excuse, but only for the period the jury judge deems necessary. At the  
21 conclusion of this period the person shall be summoned again for jury service under  
22 the provisions of § 8-208 of this title.

23 (b) Any person summoned for jury service may be excused from a particular  
24 jury:

25 (1) In accordance with rule or law if more jurors are summoned than are  
26 required to be impaneled in a particular case;

27 (2) By the court after a determination that the person may be unable to  
28 render impartial jury service or that his service would be likely to disrupt the  
29 proceedings;

30 (3) By the court after a determination that the juror's service may  
31 threaten the secrecy of the proceedings or otherwise adversely affect the integrity of  
32 the jury deliberations; but a person may not be excused on this ground unless the  
33 court states on the record its reasons for the excuse and its determination that the  
34 excuse is warranted and will not be inconsistent with §§ 8-102 and 8-103 of this title;

35 (4) By a party upon peremptory challenge as provided by rule or law; or

1 (5) By the court upon a challenge by a party for good cause shown.

2 (c) [A person may not be disqualified, excused, or excluded from service in a  
3 particular case as a juror of the State by reason of his beliefs against capital  
4 punishment unless such belief would prevent his returning an impartial verdict  
5 according to law.

6 (d)] No person or class of person may be disqualified, excused, or exempted  
7 from service as a juror except under this section or § 8-209 of this title.

8 [(e)] (D) Any person excused from jury service or from a particular jury  
9 under [subsection (a), (b), or (c)] SUBSECTION (A) OR (B) of this section is eligible to sit  
10 on another jury if the basis for his excuse is not relevant to his ability to serve on the  
11 other jury.

12 [(f)] (E) When a person is disqualified or excused from jury service, the jury  
13 commissioner or clerk shall note the specific reason in the space provided on his juror  
14 qualification form or on the juror's card drawn from the qualified jury wheel.

15 8-301.

16 (a) [In a trial in which the defendant is subject, on any single count, to a  
17 sentence of death because notice of intention to seek a sentence of death has been  
18 given under § 2-202 of the Criminal Law Article, each defendant is permitted 20  
19 peremptory challenges and the State is permitted 10 peremptory challenges for each  
20 defendant.

21 (b)] In a criminal trial in which the defendant is subject, on any single count, to  
22 a sentence of life imprisonment, [including a case in which notice of intention to seek  
23 a sentence of death has not been given under § 2-202 of the Criminal Law Article,]  
24 except for common law offenses for which no specific penalty is provided by statute,  
25 each defendant is permitted 20 peremptory challenges and the State is permitted 10  
26 peremptory challenges for each defendant.

27 [(c)] (B) Except as provided in [subsections (a) and (b)] SUBSECTION (A) of  
28 this section, in a criminal trial in which the defendant is subject, on any single count,  
29 to a sentence of 20 years or more, except for common law offenses for which no specific  
30 penalty is provided by statute, each defendant is permitted 10 peremptory challenges  
31 and the State is permitted 5 peremptory challenges for each defendant.

32 [(d)] (C) In all other criminal cases, each party is permitted 4 peremptory  
33 challenges.

34 [(e)] (D) The clerk of the court shall provide a sufficient number of  
35 prospective jurors to allow the parties to exercise the peremptory challenges  
36 permitted by this section or the Maryland Rules.

1 9-204.

2 [(a)] The court which issued an execution on a forfeited recognizance for a  
3 witness who failed to appear may discharge the witness from execution upon motion  
4 showing good and sufficient cause for the failure.

5 [(b)] This section does not apply in a case if capital punishment may be  
6 involved.]

7 12-307.

8 The Court of Appeals has:

9 (1) Jurisdiction to review a case or proceeding pending in or decided by  
10 the Court of Special Appeals in accordance with Subtitle 2 of this title;

11 (2) Jurisdiction to review a case or proceeding decided by a circuit court,  
12 in accordance with § 12-305 of this subtitle; AND

13 (3) Exclusive appellate jurisdiction with respect to a question of law  
14 certified to it under the Uniform Certification of Questions of Law Act[; and

15 (4) Exclusive appellate jurisdiction over a criminal case in which the  
16 death penalty is imposed and any appellate proceeding under § 3-904 of the  
17 Correctional Services Article].

18

#### **Article - Criminal Procedure**

19 7-101.

20 This title applies to a person convicted in any court in the State who is:

21 (1) confined under sentence of [death or] imprisonment; or

22 (2) on parole or probation.

23 7-103.

24 (b) [(1)] Unless extraordinary cause is shown, [in a case in which a sentence  
25 of death has not been imposed,] a petition under this subtitle may not be filed more  
26 than 10 years after the sentence was imposed.

27 [(2)] In a case in which a sentence of death has been imposed, Subtitle 2 of  
28 this title governs the time of filing a petition.]

29 7-107.

30 (b) (1) In a case in which a person challenges the validity of confinement  
31 under a sentence of [death or] imprisonment by seeking the writ of habeas corpus or  
32 the writ of coram nobis or by invoking a common law or statutory remedy other than

1 this title, a person may not appeal to the Court of Appeals or the Court of Special  
2 Appeals.

3 (2) This subtitle does not bar an appeal to the Court of Special Appeals:

4 (i) in a habeas corpus proceeding begun under § 9-110 of this  
5 article; or

6 (ii) in any other proceeding in which a writ of habeas corpus is  
7 sought for a purpose other than to challenge the legality of a conviction of a crime or  
8 sentence of [death or] imprisonment for the conviction of the crime, including  
9 confinement as a result of a proceeding under Title 4 of the Correctional Services  
10 Article.

## 11 Article - Criminal Law

12 2-201.

13 (b) (1) A person who commits a murder in the first degree is guilty of a  
14 felony and on conviction shall be sentenced to:

15 (i) [death;

16 (ii)] imprisonment for life without the possibility of parole; or

17 [(iii)] (II) imprisonment for life.

18 (2) Unless a [sentence of death is imposed in compliance with § 2-202 of  
19 this subtitle and Subtitle 3 of this title, or a] sentence of imprisonment for life  
20 without the possibility of parole is imposed in compliance with § 2-203 of this subtitle  
21 and § 2-304 of this title, the sentence shall be imprisonment for life.

22 [2-202.

23 (a) A defendant found guilty of murder in the first degree may be sentenced to  
24 death only if:

25 (1) at least 30 days before trial, the State gave written notice to the  
26 defendant of:

27 (i) the State's intention to seek a sentence of death; and

28 (ii) each aggravating circumstance on which the State intends to  
29 rely;

30 (2) (i) with respect to § 2-303(g) of this title, except for § 2-303(g)(1)(i)  
31 and (vii) of this title, the defendant was a principal in the first degree; or

32 (ii) with respect to § 2-303(g)(1)(i) of this title, a law enforcement  
33 officer, as defined in § 2-303(a) of this title, was murdered and the defendant was:

- 1 1. a principal in the first degree; or
- 2 2. a principal in the second degree who:
  - 3 A. willfully, deliberately, and with premeditation intended
  - 4 the death of the law enforcement officer;
  - 5 B. was a major participant in the murder; and
  - 6 C. was actually present at the time and place of the murder;
  - 7 and

8 (3) the sentence of death is imposed in accordance with § 2-303 of this  
9 title.

10 (b) (1) In this subsection, a defendant is "mentally retarded" if:

11 (i) the defendant had significantly below average intellectual  
12 functioning, as shown by an intelligence quotient of 70 or below on an individually  
13 administered intelligence quotient test and an impairment in adaptive behavior; and

14 (ii) the mental retardation was manifested before the age of 22  
15 years.

16 (2) A defendant may not be sentenced to death, but shall be sentenced to  
17 imprisonment for life without the possibility of parole subject to the requirements of §  
18 2-203(1) of this subtitle or imprisonment for life, if the defendant:

19 (i) was under the age of 18 years at the time of the murder; or

20 (ii) proves by a preponderance of the evidence that at the time of  
21 the murder the defendant was mentally retarded.]

22 [2-301.

23 (a) The State's Attorney shall file with the Clerk of the Court of Appeals a copy  
24 of each:

25 (1) notice of intent to seek a sentence of death; and

26 (2) withdrawal of notice of intent to seek a sentence of death.

27 (b) The failure of a State's Attorney to give timely notice to the Clerk of the  
28 Court of Appeals under subsection (a)(1) of this section does not affect the validity of  
29 a notice of intent to seek a sentence of death that is served on the defendant in a  
30 timely manner.]

31 [2-303.

32 (a) (1) In this section the following words have the meanings indicated.

1 (2) (i) "Correctional facility" has the meaning stated in § 1-101 of this  
2 article.

3 (ii) "Correctional facility" includes:

4 1. an institution for the confinement or detention of juveniles  
5 charged with or adjudicated as being delinquent; and

6 2. a hospital in which a person is confined under an order of  
7 a court exercising criminal jurisdiction.

8 (3) (i) "Law enforcement officer" means a law enforcement officer as  
9 defined under the Law Enforcement Officers' Bill of Rights, § 3-101 of the Public  
10 Safety Article.

11 (ii) "Law enforcement officer" includes:

12 1. a law enforcement officer of a jurisdiction outside of the  
13 State;

14 2. an officer serving in a probationary status;

15 3. a parole and probation officer; and

16 4. a law enforcement officer while privately employed as a  
17 security officer or special police officer under Title 3, Subtitle 3 of the Public Safety  
18 Article if the law enforcement officer is wearing the uniform worn while acting in an  
19 official capacity or is displaying prominently the officer's official badge or other  
20 insignia of office.

21 (b) If the State gave notice under § 2-202(a)(1) of this title, a separate  
22 sentencing proceeding shall be held as soon as practicable after a defendant is found  
23 guilty of murder in the first degree to determine whether the defendant shall be  
24 sentenced to death.

25 (c) The sentencing proceeding under subsection (b) of this section shall be  
26 conducted:

27 (1) before the jury that determined the defendant's guilt;

28 (2) before a jury impaneled for purposes of the proceeding if:

29 (i) the defendant was convicted based on a guilty plea;

30 (ii) the defendant was convicted after a trial by a court sitting  
31 without a jury;

32 (iii) the court, for good cause, discharged the jury that convicted the  
33 defendant; or

1 (iv) a court of competent jurisdiction remanded the case for  
2 resentencing following a review of the original sentence of death; or

3 (3) before the court, if the defendant waives a jury sentencing  
4 proceeding.

5 (d) (1) A judge shall appoint at least two alternate jurors when impaneling a  
6 jury for any proceeding:

7 (i) in which the defendant is being tried for a crime for which the  
8 death penalty may be imposed; or

9 (ii) that is held under this section.

10 (2) The alternate jurors shall be retained throughout the proceedings  
11 under any restrictions that the judge imposes.

12 (3) Subject to paragraph (4) of this subsection, if a juror dies, is  
13 disqualified, becomes incapacitated, or is discharged for any other reason before the  
14 jury begins its deliberations on sentencing, an alternate juror becomes a juror in the  
15 order selected, and serves in all respects as a juror selected on the regular trial panel.

16 (4) An alternate juror may not replace a juror who is discharged during  
17 the actual deliberations of the jury on the guilt or innocence of the defendant or on  
18 sentencing.

19 (e) (1) The following type of evidence is admissible in a sentencing  
20 proceeding:

21 (i) evidence relating to a mitigating circumstance that is listed  
22 under subsection (h) of this section;

23 (ii) evidence relating to an aggravating circumstance:

24 1. that is listed under subsection (g) of this section; and

25 2. of which the State provided notice under § 2-202(a)(1)(ii)  
26 of this title;

27 (iii) evidence of a prior criminal conviction, guilty plea, plea of nolo  
28 contendere, or the absence of any prior convictions or pleas, to the same extent that  
29 the evidence would be admissible in other sentencing procedures;

30 (iv) subject to paragraph (2) of this subsection, any presentence  
31 investigation report; and

32 (v) any other evidence the court finds to have probative value and  
33 relevance to sentencing, if the defendant has a fair opportunity to rebut any  
34 statement.

1 (2) A recommendation in a presentence investigation report as to a  
2 sentence is not admissible in a sentencing proceeding.

3 (3) The State and the defendant or counsel for the defendant may  
4 present argument for or against the sentence of death.

5 (f) (1) After the evidence is presented to the jury in the sentencing  
6 proceeding, the court shall:

7 (i) give any appropriate instructions allowed by law; and

8 (ii) instruct the jury as to:

9 1. the findings that the jury must make to determine  
10 whether the defendant shall be sentenced to death, imprisonment for life without the  
11 possibility of parole, or imprisonment for life; and

12 2. the burden of proof applicable to the findings under  
13 subsection (g)(2) or (i)(1) and (2) of this section.

14 (2) The court may not instruct the jury that the jury is to assume that a  
15 sentence of life imprisonment is for the natural life of the defendant.

16 (g) (1) In determining a sentence under subsection (b) of this section, the  
17 court or jury first shall consider whether any of the following aggravating  
18 circumstances exists beyond a reasonable doubt:

19 (i) one or more persons committed the murder of a law  
20 enforcement officer while the officer was performing the officer's duties;

21 (ii) the defendant committed the murder while confined in a  
22 correctional facility;

23 (iii) the defendant committed the murder in furtherance of an  
24 escape from, an attempt to escape from, or an attempt to evade lawful arrest, custody,  
25 or detention by:

26 1. a guard or officer of a correctional facility; or

27 2. a law enforcement officer;

28 (iv) the victim was taken or attempted to be taken in the course of  
29 an abduction, kidnapping, or an attempt to abduct or kidnap;

30 (v) the victim was a child abducted in violation of § 3-503(a)(1) of  
31 this article;

32 (vi) the defendant committed the murder under an agreement or  
33 contract for remuneration or promise of remuneration to commit the murder;

1 (vii) the defendant employed or engaged another to commit the  
2 murder and the murder was committed under an agreement or contract for  
3 remuneration or promise of remuneration;

4 (viii) the defendant committed the murder while under a sentence of  
5 death or imprisonment for life;

6 (ix) the defendant committed more than one murder in the first  
7 degree arising out of the same incident; or

8 (x) the defendant committed the murder while committing, or  
9 attempting to commit:

- 10 1. arson in the first degree;
- 11 2. carjacking or armed carjacking;
- 12 3. rape in the first degree;
- 13 4. robbery under § 3-402 or § 3-403 of this article; or
- 14 5. sexual offense in the first degree.

15 (2) If the court or jury does not find that one or more of the aggravating  
16 circumstances exist beyond a reasonable doubt:

17 (i) it shall state that conclusion in writing; and

18 (ii) a death sentence may not be imposed.

19 (h) (1) In this subsection, "crime of violence" means:

20 (i) abduction;

21 (ii) arson in the first degree;

22 (iii) carjacking or armed carjacking;

23 (iv) escape in the first degree;

24 (v) kidnapping;

25 (vi) mayhem;

26 (vii) murder;

27 (viii) rape in the first or second degree;

28 (ix) robbery under § 3-402 or § 3-403 of this article;

29 (x) sexual offense in the first or second degree;

- 1 (xi) manslaughter other than involuntary manslaughter;
- 2 (xii) an attempt to commit any crime listed in items (i) through (xi)
- 3 of this paragraph; or
- 4 (xiii) the use of a handgun in the commission of a felony or other
- 5 crime of violence.

6 (2) If the court or jury finds beyond a reasonable doubt that one or more

7 of the aggravating circumstances under subsection (g) of this section exist, it then

8 shall consider whether any of the following mitigating circumstances exists based on

9 a preponderance of the evidence:

- 10 (i) the defendant previously has not:
- 11 1. been found guilty of a crime of violence;
- 12 2. entered a guilty plea or a plea of nolo contendere to a
- 13 charge of a crime of violence; or
- 14 3. received probation before judgment for a crime of violence;
- 15 (ii) the victim was a participant in the conduct of the defendant or
- 16 consented to the act that caused the victim's death;
- 17 (iii) the defendant acted under substantial duress, domination, or
- 18 provocation of another, but not so substantial as to constitute a complete defense to
- 19 the prosecution;
- 20 (iv) the murder was committed while the capacity of the defendant
- 21 to appreciate the criminality of the defendant's conduct or to conform that conduct to
- 22 the requirements of law was substantially impaired due to emotional disturbance,
- 23 mental disorder, or mental incapacity;
- 24 (v) the defendant was of a youthful age at the time of the murder;
- 25 (vi) the act of the defendant was not the sole proximate cause of the
- 26 victim's death;
- 27 (vii) it is unlikely that the defendant will engage in further criminal
- 28 activity that would be a continuing threat to society; or
- 29 (viii) any other fact that the court or jury specifically sets forth in
- 30 writing as a mitigating circumstance in the case.

31 (i) (1) If the court or jury finds that one or more of the mitigating

32 circumstances under subsection (h) of this section exists, it shall determine by a

33 preponderance of the evidence whether the aggravating circumstances under

34 subsection (g) of this section outweigh the mitigating circumstances.

35 (2) If the court or jury finds that the aggravating circumstances:

1 (i) outweigh the mitigating circumstances, a death sentence shall  
2 be imposed; or

3 (ii) do not outweigh the mitigating circumstances, a death sentence  
4 may not be imposed.

5 (3) If the determination is by a jury, a decision to impose a death  
6 sentence must be unanimous and shall be signed by the jury foreperson.

7 (4) A court or jury shall put its determination in writing and shall state  
8 specifically:

9 (i) each aggravating circumstance found;

10 (ii) each mitigating circumstance found;

11 (iii) whether any aggravating circumstances found under subsection  
12 (g) of this section outweigh the mitigating circumstances found under subsection (h)  
13 of this section;

14 (iv) whether the aggravating circumstances found under subsection  
15 (g) of this section do not outweigh the mitigating circumstances found under  
16 subsection (h) of this section; and

17 (v) the sentence determined under subsection (g)(2) of this section  
18 or paragraphs (1) and (2) of this subsection.

19 (j) (1) If a jury determines that a death sentence shall be imposed under the  
20 provisions of this section, the court shall impose a death sentence.

21 (2) If, within a reasonable time, the jury is unable to agree as to whether  
22 a death sentence shall be imposed, the court may not impose a death sentence.

23 (3) If the sentencing proceeding is conducted before a court without a  
24 jury, the court shall determine whether a death sentence shall be imposed under the  
25 provisions of this section.

26 (4) If the court or jury determines that a death sentence may not be  
27 imposed and the State gave notice under § 2-203(1) of this title, a determination shall  
28 be made concerning imprisonment for life without the possibility of parole under §  
29 2-304 of this subtitle.

30 (5) If the court or jury determines that a death sentence may not be  
31 imposed and if the State did not give notice under § 2-203(1) of this title, the court  
32 shall impose a sentence of imprisonment for life.

33 (k) (1) Immediately after the imposition of a death sentence:

34 (i) the clerk of the court in which sentence is imposed, if different  
35 from the court where the indictment or information was filed, shall certify the

1 proceedings to the clerk of the court where the indictment or information was filed;  
2 and

3 (ii) the clerk of the court where the indictment or information was  
4 filed shall copy the docket entries in the inmate's case, sign the copies, and deliver  
5 them to the Governor.

6 (2) The docket entries shall show fully the sentence of the court and the  
7 date that the sentence was entered.

8 (1) If the defendant is sentenced to death, the court before which the  
9 defendant is tried and convicted shall sentence the defendant to death by intravenous  
10 administration of a lethal quantity of an ultrashort-acting barbiturate or other  
11 similar drug in combination with a chemical paralytic agent.]

12 2-304.

13 (a) [(1)] If the State gave notice under § 2-203(1) of this title, [but did not  
14 give notice of intent to seek the death penalty under § 2-202(a)(1) of this title,] the  
15 court shall conduct a separate sentencing proceeding as soon as practicable after the  
16 defendant is found guilty of murder in the first degree to determine whether the  
17 defendant shall be sentenced to imprisonment for life without the possibility of parole  
18 or to imprisonment for life.

19 [(2) If the State gave notice under both §§ 2-202(a)(1) and 2-203(1) of this  
20 title, but the court or jury determines that the death sentence may not be imposed,  
21 that court or jury shall determine whether the defendant shall be sentenced to  
22 imprisonment for life without the possibility of parole or to imprisonment for life.]

23 2-305.

24 The Court of Appeals may adopt:

25 (1) rules of procedure to govern the conduct of sentencing proceedings  
26 under [§§ 2-303 and 2-304] § 2-304 of this subtitle; and

27 (2) forms for a court or jury to use in making written findings and  
28 sentence determinations.

29 [2-401.

30 (a) (1) After a death sentence is imposed and the judgment becomes final,  
31 the Court of Appeals shall review the sentence on the record.

32 (2) The Court of Appeals shall consolidate an appeal from the verdict  
33 with the sentence review.

34 (b) The clerk of the trial court shall send to the Clerk of the Court of Appeals:

35 (1) the entire record and the transcript of the sentencing proceeding  
36 within 10 days after receiving the transcript;

1 (2) the determination and written findings of the court or jury; and

2 (3) a report of the trial court that:

3 (i) is in the form of a standard questionnaire supplied by the Court  
4 of Appeals; and

5 (ii) includes a recommendation by the trial court as to whether the  
6 death sentence is justified.

7 (c) The defendant and the State may submit briefs and present oral  
8 arguments to the Court of Appeals within the time allowed by the Court.

9 (d) (1) In addition to any error properly before the Court on appeal, the  
10 Court of Appeals shall consider the imposition of the death sentence.

11 (2) With regard to the death sentence, the Court of Appeals shall  
12 determine whether:

13 (i) the imposition of the death sentence was influenced by passion,  
14 prejudice, or any other arbitrary factor;

15 (ii) the evidence supports the finding by the court or jury of a  
16 statutory aggravating circumstance under § 2-303(g) of this title; and

17 (iii) the evidence supports a finding by the court or jury that the  
18 aggravating circumstances outweigh the mitigating circumstances under § 2-303(h)  
19 and (i)(1) of this title.

20 (3) In addition to its review under any direct appeal, with regard to the  
21 death sentence, the Court of Appeals shall:

22 (i) affirm the death sentence;

23 (ii) set the death sentence aside and remand the case for a new  
24 sentencing proceeding under § 2-303 of this title; or

25 (iii) set the death sentence aside and remand the case for  
26 modification of the sentence to imprisonment for life.

27 (e) The Court of Appeals may adopt rules of procedure for the expedited  
28 review of death sentences under this section.]

29 14-101.

30 (a) In this section, "crime of violence" means:

31 (1) abduction;

32 (2) arson in the first degree;

- 1 (3) kidnapping;
- 2 (4) manslaughter, except involuntary manslaughter;
- 3 (5) mayhem;
- 4 (6) maiming, as previously proscribed under Article 27, §§ 385 and 386 of  
5 the Code;
- 6 (7) murder;
- 7 (8) rape;
- 8 (9) robbery under § 3-402 or § 3-403 of this article;
- 9 (10) carjacking;
- 10 (11) armed carjacking;
- 11 (12) sexual offense in the first degree;
- 12 (13) sexual offense in the second degree;
- 13 (14) use of a handgun in the commission of a felony or other crime of  
14 violence;
- 15 (15) an attempt to commit any of the crimes described in items (1)  
16 through (14) of this subsection;
- 17 (16) assault in the first degree;
- 18 (17) assault with intent to murder;
- 19 (18) assault with intent to rape;
- 20 (19) assault with intent to rob;
- 21 (20) assault with intent to commit a sexual offense in the first degree; and
- 22 (21) assault with intent to commit a sexual offense in the second degree.

23 (b) [This section does not apply if a person is sentenced to death.

24 (c) (1) Except as provided in [subsection (g)] SUBSECTION (F) of this  
25 section, on conviction for a fourth time of a crime of violence, a person who has served  
26 three separate terms of confinement in a correctional facility as a result of three  
27 separate convictions of any crime of violence shall be sentenced to life imprisonment  
28 without the possibility of parole.

29 (2) Notwithstanding any other law, the provisions of this subsection are  
30 mandatory.

1 [(d)] (C) (1) Except as provided in [subsection (g)] SUBSECTION (F) of this  
2 section, on conviction for a third time of a crime of violence, a person shall be  
3 sentenced to imprisonment for the term allowed by law but not less than 25 years, if  
4 the person:

5 (i) has been convicted of a crime of violence on two prior separate  
6 occasions:

7 1. in which the second or succeeding crime is committed after  
8 there has been a charging document filed for the preceding occasion; and

9 2. for which the convictions do not arise from a single  
10 incident; and

11 (ii) has served at least one term of confinement in a correctional  
12 facility as a result of a conviction of a crime of violence.

13 (2) The court may not suspend all or part of the mandatory 25-year  
14 sentence required under this subsection.

15 (3) A person sentenced under this subsection is not eligible for parole  
16 except in accordance with the provisions of § 4-305 of the Correctional Services  
17 Article.

18 [(e)] (D) (1) On conviction for a second time of a crime of violence committed  
19 on or after October 1, 1994, a person shall be sentenced to imprisonment for the term  
20 allowed by law, but not less than 10 years, if the person:

21 (i) has been convicted on a prior occasion of a crime of violence,  
22 including a conviction for a crime committed before October 1, 1994; and

23 (ii) served a term of confinement in a correctional facility for that  
24 conviction.

25 (2) The court may not suspend all or part of the mandatory 10-year  
26 sentence required under this subsection.

27 [(f)] (E) If the State intends to proceed against a person as a subsequent  
28 offender under this section, it shall comply with the procedures set forth in the  
29 Maryland Rules for the indictment and trial of a subsequent offender.

30 [(g)] (F) (1) A person sentenced under this section may petition for and be  
31 granted parole if the person:

32 (i) is at least 65 years old; and

33 (ii) has served at least 15 years of the sentence imposed under this  
34 section.

35 (2) The Maryland Parole Commission shall adopt regulations to  
36 implement this subsection.

1

**Article - Health - General**

2 8-505.

3 (b) [Except in a capital case, on] ON consideration of the nature of the charge,  
4 the court:

5 (1) May require or permit an examination to be conducted on an  
6 outpatient basis; and

7 (2) If an outpatient examination is authorized, shall set bail for the  
8 defendant or authorize the release of the defendant on personal recognizance.

9 SECTION 4. AND BE IT FURTHER ENACTED, That an inmate who has been  
10 sentenced to death before the effective date of this Act and who has not been executed  
11 may not be executed and shall be considered as having received a sentence of life  
12 imprisonment without the possibility of parole.

13 SECTION 5. AND BE IT FURTHER ENACTED, That in any case in which the  
14 State has properly filed notice that it intended to seek a sentence of death under §  
15 2-202 of the Criminal Law Article in which a sentence has not been imposed, the  
16 notice of intention to seek a sentence of death shall be considered withdrawn and it  
17 shall be considered that the State properly filed notice under § 2-203 of the Criminal  
18 Law Article to seek a sentence of life imprisonment without the possibility of parole.

19 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 October 1, 2004.